

STATE OF MICHIGAN
COURT OF APPEALS

HOBWEN, INC. and STAMPEDE
MANAGEMENT, INC.,

UNPUBLISHED
March 20, 2012

Plaintiffs-Appellants,

v

SISBRO MANAGEMENT, L.L.C. and WT
DEVELOPMENT CORPORATION,

No. 302755
Oakland Circuit Court
LC No. 2010-108106-CK

Defendants-Appellees.

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendant, Sisbro Management, L.L.C., in this action to enforce a use restriction contained in a Declaration of Restrictions, Easements, and Covenants that applied to defendant's property.¹ We reverse and remand for further proceedings consistent with this opinion.

Plaintiff, Hobwen, Inc., owns property on which plaintiff, Stampede Management, Inc., operates a Wendy's restaurant. Defendant owns property next to the Wendy's restaurant and intended to build a Taco Bell on the property. However, defendant's property is subject to a use restriction which provides that the property "shall not be used for a restaurant use, the primary business of which is the sale of hamburgers, hamburger products or chicken sandwiches (or any combination thereof)." Thus, plaintiffs brought this action claiming that constructing a Taco Bell on defendant's property would violate the use restriction. Plaintiffs requested a temporary restraining order and a judgment enjoining defendant's construction of a Taco Bell restaurant on the property.

The parties eventually filed cross-motions for summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs argued that the plain language of the use restriction clearly precluded the construction of a Taco Bell restaurant which sells "hamburger products;" that is, ground beef

¹ Defendant WT Development Corporation's motion for summary disposition was granted and is not challenged on appeal; thus, we refer to Sisbro Management, L.L.C. as "defendant."

products like tacos, burritos, and similar menu items. Defendant argued that the use restriction only prohibited hamburger restaurants that would be viewed as competitors of Wendy's restaurants. Further, the term "hamburger products" merely meant hamburgers sold by Wendy's competitors and, because Taco Bell does not sell hamburgers, the use restriction did not prevent the construction of a Taco Bell restaurant.

The trial court agreed with defendant, holding that the use restriction did not prevent defendant from constructing a Taco Bell restaurant on the property. The court noted that the only disputed term of the use restriction was "hamburger products." The court concluded that the meaning of the term was not clear on its face, was undefined in the use restriction, and that there was no commonly understood meaning of the term. The court rejected plaintiffs' contention that "hamburger products" was synonymous with "ground beef products." Thus, the court held, the term "hamburger products" was ambiguous and could not be enforced as written. The definable portion of the restrictive covenant prevented the operation of a restaurant that received fifteen percent of its gross sales from the sale of hamburgers or chicken sandwiches. Because it was undisputed that fifteen percent of Taco Bell's gross sales did not come from the sale of hamburgers or chicken sandwiches, a Taco Bell could be constructed on defendant's property and summary disposition in defendant's favor was granted. Plaintiffs' motion for reconsideration was denied, and this appeal followed.

Plaintiffs argue that defendant was not entitled to summary disposition because the trial court erroneously held that the term "hamburger products" in the use restriction was ambiguous. We agree.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Terrien v Zwit*, 467 Mich 56, 60-61; 648 NW2d 602 (2002). Similarly, interpretations of restrictive covenants are questions of law that we review de novo. *Id.* at 60-61; see, also, *Bloomfield Estates Improvement Ass'n, Inc v Birmingham*, 479 Mich 206, 212; 737 NW2d 670 (2007).

This dispute involves the interpretation of a restrictive covenant. "A covenant is a contract created with the intention of enhancing the value of property, and, as such, it is a 'valuable property right.'" *Terrien*, 467 Mich at 71, quoting *City of Livonia v Dep't of Social Services*, 423 Mich 466, 525; 378 NW2d 402 (1985). As with any contract, when interpreting a restrictive covenant the goal is to ascertain the intent of the parties as can be deduced from its language. *Moore v Kimball*, 291 Mich 455, 461; 289 NW 213 (1939). "The question is not what intention existed in the minds of the parties, but what intention was expressed in the language used; and where unambiguous, the terms of the restrictions are conclusive." *Id.* Accordingly, the plain meaning of the terms may not be challenged with extrinsic evidence and unambiguous restrictions must generally be enforced as written. *Bloomfield Estates Improvement Ass'n, Inc*, 479 Mich at 214; *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997).

The presence of undefined terms in the restrictive covenant does not render it ambiguous. *Terrien*, 467 Mich at 76. A relevant term in a contract that is undefined is interpreted in accordance with its "commonly used meaning." *Bloomfield Estates Improvement Ass'n*, 479 Mich at 215, quoting *Terrien*, 467 Mich at 76-77. That is, "the language employed in stating the

restriction is to be taken in its ordinary and generally understood or popular sense, and is not to be subjected to technical refinement” *Borowski v Welch*, 117 Mich App 712, 716-717; 324 NW2d 144 (1982). A contract is, however, ambiguous when a term is equally susceptible to more than a single meaning. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). But, contrary to the trial court’s holding in this case, a term is not considered ambiguous merely because it has multiple dictionary definitions or understandings. See *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 317-318; 645 NW2d 34 (2002); *Cole v Auto-Owners Ins Co*, 272 Mich App 50, 54; 723 NW2d 922 (2006).

The use restriction at issue here provides that the subject property:

shall not be used for a restaurant use, the primary business of which is the sale of hamburgers, hamburger products or chicken sandwiches (or any combination thereof). For the purpose of this restriction, a restaurant has the aforesaid products as its primary business if fifteen percent (15%) or more of its gross sales, exclusive of taxes, beverage and dairy product sales, consists of sales of hamburgers, hamburger products or chicken sandwiches (or any combination thereof).

This dispute centers on the meaning of the term “hamburger products.” The use restriction does not define the term; thus, we consider the “commonly used meaning.” *Terrien*, 467 Mich at 76-77. As defendant admits, a “hamburger” is commonly understood to be “1. ground beef 2. a fried, broiled, or baked patty of such meat 3. a sandwich made with such a patty, usually in a round bun.” Webster’s New World Dictionary (1984). And a “product” is commonly understood to be “1. something produced by nature or made by human industry or art 2. result.” *Id.* All three definitions of “hamburger” refer to it as being “ground beef,” whether as a ground beef patty or sandwich. And here, the use restriction specifically references “hamburgers,” thus, the term “hamburger products” does not implicate either the ground beef patty or sandwich meanings of the word “hamburger.” Accordingly, the term “hamburger products” plainly means ground beef items that are produced or made or, stated another way, items made with ground beef.

Even without resorting to a dictionary for the commonly understood meaning of the term “hamburger products,” we would conclude that the term refers to ground beef items that are made or items made with ground beef. As this Court held in *Borowski*, 117 Mich App 716-717, the language used in stating the restriction should not be “subjected to technical refinement, nor the words torn from their association and their separate meanings sought in a lexicon.” It is clear that, in its popular sense, the term “hamburger products” means items made with ground beef and, in light of the other terms in this restriction, the items made with ground beef are not ground beef patties or sandwiches. Thus, the restrictive covenant contains no ambiguity and must be enforced as written. See *Bloomfield Estates Improvement Ass’n, Inc*, 479 Mich at 214.

Defendant argues that plaintiffs were required to produce evidence of the drafter’s original intent as to the meaning of the term “hamburger products.” We disagree. The term “hamburger products” is not ambiguous because it is not susceptible to more than one meaning. See *Coates*, 276 Mich App at 503. This conclusion is supported by the fact that the record is devoid of any argument proposing another “commonly understood” meaning of the term

“hamburger products.” Thus, the intent of the parties is clearly ascertainable from the plain language of the use restriction and extraneous facts, including the supposed intention of the drafter, cannot overcome the express language. See *Moore*, 291 Mich at 460-461. And defendant’s reference to the technical meaning of the word “hamburger,” as defined by the United States Department of Agriculture, is not persuasive because the language of the restriction is to be construed “in its ordinary and generally understood or popular sense, and is not to be subjected to technical refinement.” *Borowski*, 117 Mich App at 716-717. Defendant’s reliance on the rule that “all doubts are to be resolved in favor of the free use of property,” is also misplaced because such rule is inapplicable when, as here, there is no ambiguous restriction to interpret. See *id.* at 716.

Accordingly, we reverse the trial court’s grant of summary disposition in defendant’s favor. The court’s conclusions that the term “hamburger products” is ambiguous and could not be enforced as written are erroneous. Because the trial court did not determine whether defendant’s intended restaurant’s primary business “consists of sales of . . . hamburger products,” i.e., ground beef items or items made with ground beef, as set forth in the use restriction, we remand this matter to the trial court for consideration of this issue and for determination whether plaintiffs are entitled to summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Henry William Saad